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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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MAY 01 2008

FILE:

MSC 06 080 10897

Office: NATIONAL BENEFITS CENTER

Date:

IN RE:

Applicant:

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Director, National Benefits Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on December 19, 2005. The applicant did not submit any accompanying evidence demonstrating his entry into the United States in an unlawful status prior to January 1, 1982 or continuous unlawful residence in the United States.

On January 31, 2006, the director issued a Notice of Intent to Deny (NOID) the application observing that the applicant had not presented evidence that he had entered the United States prior to January 1, 1982 and had continuously resided in the United States unlawfully until the filing date of the application and had not submitted any evidence that he was continuously present in the United States from November 6, 1986 until the filing date of the application. The director denied the application on July 11, 2006.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided a copy of a recognized identity card, such as a driver's license; whether the affiant provided some proof that he or she was present in the United States during the requisite period; and whether the affiant provided a valid telephone number. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

An applicant for temporary residence under the CSS/Newman Settlement Agreements need only establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and have been physically present in the United States from November 6, 1986 until the date of filing the application as defined above.

The record on appeal includes the applicant's statement that he has lived in the United States since May 1978; first in Chicago, Illinois for more than ten years and then in La Puente, California since August 1989. The record also includes an affidavit dated June 5, 1993 from [REDACTED] who declares that the applicant is his brother and that the applicant lived with him in Chicago, Illinois since May 1978 until the applicant moved to California. The record further includes a photocopy of a membership card for Local 22 Allied Crafts Division certifying that [REDACTED] is a member in good standing. The membership card is dated November '79. The record also contains an optical benefits card from Local Union No. 22 Allied Crafts Division with the applicant's name and the date November 80. The record contains a photocopy of a Chicago vehicle license application that bears a fee-payment date of November 13, 1979 and a photocopy of a traffic ticket complaint with the applicant's name handwritten in but no discernable date or information about the nature of the infraction. The record further contains photocopies of statements of earnings and deductions showing the name "General Cooperage Co." at the top of each pay stub, the applicant's name, and that the pay

stub was issued for weeks ending on particular days of the month. The pay stubs do not list a year although at the top of each photocopied page the year "1981" is typed in, except for one page which shows the year "1982" typed at the top of the page.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date the application was filed.

The AAO does not find that the affidavit signed by Juan Iniguez is probative. The affiant does not provide any proof that he was present in the United States during the requisite period. Moreover, the affiant does not provide any details regarding the circumstances and events leading to and concerning the time the applicant stayed with him, does not provide any evidence, such as photographs or incidents that document the applicant's stay with him, and does not identify the applicant's work or social circumstances during the time the applicant stayed with him. The affidavit is insufficient to establish that the applicant entered the United States prior to January 1, 1982 and his continuous unlawful residence during the requisite time period.

The AAO does not find the documents submitted to show that the applicant was a member of Local Union No. 22 Allied Crafts Division probative. The pay stubs do not evidence the year of employment on the actual pay stubs, but instead the year appears only at the top of the page of the photocopies, thus the photocopy of the pay stubs does not identify the applicant or the relevant dates. The documentation relating to Benjamin Iniguez' claimed membership in Local Union No. 22 Allied Crafts Division is unsubstantiated. Neither the applicant's claimed union membership nor the applicant's claimed employment is credible and thus is not probative.

The absence of sufficiently detailed and credible documentation to corroborate the applicant's claim of entry into the United States prior to January 1, 1982 and continuous unlawful residence for the entire requisite period seriously detracts from the credibility of his claim. Given the paucity of supporting documentation, it is concluded that he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The record lacks any document that might lend credibility to the applicant's claim of entry and residence in the United States for the required time period.

The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The appeal will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.